

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

CRP.No. 2365 of 1996(F)

**R.C.A.22/1996 OF RENT CONTROL APPELLATE AUTHORITY, KASARAGOD,
R.C.P.32/1978 OF THE RENT CONTROL COURT, KASARAGOD.**

**PETITIONER/1ST RESPONDENT/1ST RESPONDENT IN I.A/ORIGINAL
2ND PETITIONER IN R.C.P:**

**BEE PATHUMMA, W/O. ABDULKHADER,
VETIYAVALLAPPU, MOGRAL VILLAGE,
KASARAGOD TALUK, P.O. MOGRAL.**

BY ADV. DR.P.S.KRISHNA PILLAI.

RESPONDENT/APPELLANT/PETITIONER IN I.A./ORIGINAL RESPONDENT IN RCP:

- 1. SHEKHARA, S/O. KANDANKUNHI,
MERCHANT, RESIDING NEAR BUS-STAND,
KUMBLA, KOIPADY VILLAGE, KASARGOD TALUK,
P.O. KUMBLA.**
- 2. NAFEESA, W/O. ISMAIL, RESIDING AT PERAL,
MOGRAL VILLAGE, KASARGOD TALUK,
MOGRAL.P.O.**

BY ADV. SRI.M. SASINDRAN.

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

ORDER ON C.M.P. NO. 4125/1996 IN C.R.P. NO. 2365/1996

DISMISSED

SD/- J.B.KOSHY, JUDGE.

25/06/2007.

SD/- K.P.BALACHANDRAN, JUDGE.

//TRUE COPY//

prv.

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No. 2365 of 1996 &
W.P.(C)No. 25643 of 2006 B

ORDER

Balachandran, J.

The first petitioner in R.C.P.No.32/78 on the file of the Rent Control Court, Kasaragod is the petitioner. In R.C.P.No.32/78, which was filed by the petitioner and the second respondent for eviction of the first respondent/tenant under Section 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'), eviction was allowed and vacant possession of the scheduled building was ordered to be surrendered to the landlords by the first respondent/tenant on 27.7.1989, after three tiers of litigation. The landlords reconstructed only the ground floor of the building as against the proposal for construction of a storied building submitted before the Rent Control Court. The first

respondent/tenant was offered the eastern most room in the ground floor, which floor alone was reconstructed. The tenant refused to occupy the said portion, as according to him, it was not a reasonable substitute for the building vacated by him. The first respondent/tenant filed I.A.No. 2274/95 in R.C.P.No.32/78 praying for a direction to the landlords to reconstruct a room convenient for him with the same amenity he enjoyed previously. The Rent Control Court came to the conclusion that the room offered to the first respondent/tenant is reasonably sufficient for the occupation of the tenant and held that no further direction is necessary on the petition filed by the tenant. Accordingly the said IA was dismissed.

2. The first respondent/tenant filed R.C.A.No. 22/96 before the Rent Control Appellate Authority, Kasaragode. The appellate authority condemned the conduct of the landlords in not reconstructing the building as per the plan submitted before court, found that the accommodation offered to the tenant

in the reconstructed ground floor, which is about eight feet below the ground level is not suitable to be offered as accommodation in the reconstructed building for the tenant, directed the landlords as a temporary measure, to surrender the key of the western most room on the ground floor before the Rent Control Court before 1.11.1996; that the tenant shall be entitled to obtain the key of the said room from the Rent Control Court on 1.11.1996 and shall be liable to pay rent from that date till fair rent of the said room is fixed by the Rent Control Court; that the landlords shall reconstruct the upstairs portion as expeditiously as possible and while undertaking the construction of the upstairs portion, the room above the portion presently allotted to the tenant in the ground floor shall be reconstructed and allotted to the tenant first.

3. The appellate authority has, in the judgment in R.C.A.No.22/96, referred to the ground floor as the first floor and the floor to be

constructed above that as the second floor and for the sake of convenience, we also adopt the same course to refer to the rooms in the ground and first floors. The appellate authority has marked the room allotted to the tenant in the first floor as 'B' and the room to be constructed above that as 'A'. It is not in dispute that the second floor of the building is now complete and before the disposal of R.C.A.No.22/96, vide judgment dated 4.10.1996, the first petitioner in the writ petition is put in possession of that room in the second floor. The said tenant has come up with the writ petition, when he was sought to be evicted in execution of the direction to put the first respondent/tenant in possession of the said room.

4. It is worthy to point out that the rooms in the first and second floors referred to as the western most rooms has been subsequently corrected on the application of the landlords as eastern most rooms as the reference as western most rooms was a mistake. At the time of getting the said correction

effected, the first petitioner in the writ petition had already been put in occupation of the eastern most room on the second floor. The petitioner/landlady challenges the order passed by the Rent Control Appellate Authority in R.C.A.No.22/96, as the said direction, according to her, is in excess of the jurisdiction of the appellate authority.

5. The Commission Report filed in R.C.P.No. 32/98 on 23.1.1996 showed the details of the building, which was reconstructed in the first floor. The Commissioner reported that the room reconstructed in the first floor is not provided with windows; that the only access for light and air is through the front door and one cannot see the road or even a bus plying on the road from the ground floor of the building under reconstruction. He has also reported that there are fifteen steps from the road level to the ground floor of the building and that those steps are the approach to the Kumbala-Badiadka Road, to which, the building faces.

6. On a detailed hearing of the counsel on both sides and going through the judgment of the appellate authority, we are convinced that the attempt of the landlords is to provide a room in the reconstructed building in the ground floor, which is eight feet beneath the ground level and to cause the business of the tenant to be put to stake. It is worthy to note that what is contemplated, consequent on an eviction ordered under Section 11(4)(iv) of the Act, is to reconstruct the building completely within the time specified or within such further time as may be allowed by the court.

7. The third proviso to Section 11(4)(iv) of the Act mandates that the tenant, who has been evicted, shall have the first option to have the reconstructed building allotted to him with liability to pay its fair rent. The right of the tenant to have the first option to have the reconstructed building allotted to him is a valid right that is safeguarded to the tenant by the

legislature in the event of the landlord obtaining eviction on the ground of reconstruction. A Division Bench of this Court in **Lakshmi v. Labbah Kunju Ameer Hamsa** (2005 () KLT 627) has observed that if a tenant, doing hotel business in a few rooms belonging to the landlord, is evicted for the purpose of reconstruction, he must be given back more or less equivalent space with the convenience for doing his hotel business, as, otherwise, the purpose of the proviso will not be achieved. It was also observed that after analysing the then existing case law on the point, Subramonian Poti, Ag.C.J., (as he then was) had held in **Varghese Mathew v. Fakir Rawther Abdul Razak** (AIR 1982 Kerala 29) that even though it may not be possible to say that the tenant must be allotted identical space with identical shape, he must get more or less the same advantages as before. It was also held in Varghese Mathew's case (supra) that the third proviso to Section 11(4)(iv) of the Act

should not be construed in such a way as to make it illusory or inoperative. In the instant case, both sides have no case that the building that was in occupation of the tenant before its demolition was beneath the road level or that it was not having direct road frontage. After having demolished that building and reconstructed the same in such a manner that the first floor of the reconstructed building is eight feet below the road level, the petitioner/landlady cannot accommodate the tenant in such a cellar room, so as to cause impediment for his business being conducted as before and to let out rooms in the second floor, which is on the road level, to new tenants at higher rent. That is, certainly, not the purpose of the third proviso to Section 11(4)(iv) of the Act. Consequently, therefore, there is no merit in the revision filed by the landlady impugning the directions given by the appellate authority to put the first respondent/tenant in possession of the reconstructed room on the eastern most portion of

the second floor of the building, which is above the room in the first floor, which the petitioner has earmarked for the tenant. The Civil Revision petition, therefore, deserves to be dismissed.

8. It is the tenant, who has been put in possession of the eastern most room in the second floor of the building by the petitioner/landlady, who has filed the writ petition along with the petitioner in the CRP. The writ petition is filed challenging Exhibit P7 order of the Principal Munsiff, Kasaragod, dismissing the claim petition filed by him as E.A.No.33/06 in E.P.No.137/05 in R.C.P.No.32/78, advancing claim to the eastern most shop room on the second floor of the reconstructed building, which is just above the shop room the landlady has earmarked for the first respondent/tenant. The landlady cannot put a new tenant in occupation without giving first option to the tenant in the reconstructed building to have accommodation allotted to him and to contend that somebody else is already put in possession and

hence, the direction given by the appellate authority is impossible of performance. However, the new tenant, who has come up with this writ petition, challenging the dismissal of his claim petition, cannot have his claim upheld, as he is one who has come into occupation under the landlady, who was under an obligation to the tenant, who was evicted, to have the first option to have accommodation in the reconstructed building re-allotted to him. The writ petition is devoid of merit and hence, deserves to be dismissed.

In the result, both the Civil Revision Petition and the Writ Petition are dismissed.

(J.B.Koshy, Judge)

25th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No.2365/96 & W.P. (C) No.25634/06

ORDER

25th June, 2007